



MEMO ENDORSED

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January 28, 2021

Via ECF

The Honorable Katherine Polk Failla
United States District Court for the
Southern District of New York
40 Foley Square
New York, NY 10007

Re: Azor-El, et al. v. City of New York, et al., Case Nos. 20 CV 3650, 20 CV 3978, 20 CV 3979, 20 CV 3980, 20 CV 3982, 20 CV 3983, 20 CV 3984, 20 CV 3985, and 20 CV 3990

Dear Judge Failla:

I am an Assistant Corporation Counsel in the Office of the Corporation Counsel of the City of New York, James E. Johnson, attorney for the Defendants City of New York and Kisa Smalls (collectively, "Defendants" or "the City") in the above-referenced consolidated actions.¹ I write in response to Plaintiffs' letter-motion, emailed to Chambers and to myself on January 28, 2021, in light of the ongoing issues with the Court's electronic case filing system.

To start, I wish to convey my appreciation that Plaintiffs' counsel included in their letter-motion the basis for the City's objection to Plaintiffs' application for a deposition. Nevertheless, I wish to respond to Plaintiffs' additional application to present testimony at oral argument on their pending motion for a preliminary injunction, currently scheduled for February

¹ Cole v. Smalls, 20 CV 3981 (KPF), has not been consolidated with these actions and remains a closed case, but assuming that it will be reopened and consolidated once Mr. Cole files an application to proceed *in forma pauperis*, the City proceeds as if the instant letter were filed with respect to that action as well.

10, 2021. The City does not understand this oral argument to be an evidentiary hearing. Typically, motions for preliminary injunctive relief are reviewed on the papers first and, if there are outstanding questions of fact, evidentiary hearings are then scheduled. Upon submission of the City's papers on February 1, 2021, the City believes that it will be clear that there are no fact issues and that this motion can be decided on the papers and oral argument. Therefore, the City respectfully requests that Plaintiffs' application to present live testimony also be denied.

We appreciate the Court's attention to this matter.

Respectfully yours,

/s/ David S. Thayer

David S. Thayer

cc: ***Via ECF***
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The Court is in receipt of the parties' letters regarding Plaintiffs' request to pursue additional depositions in advance of oral argument on Plaintiffs' pending motion for a preliminary injunction. (See, e.g., *Azor-El v. City of New York et al.*, No. 20 Civ. 3650 (KPF), Dkt. #70-71). Plaintiffs' request is DENIED without prejudice. Plaintiffs may renew their request after the pending motion for a preliminary injunction is resolved.

The Court understands that Plaintiffs seek relief for a class that includes all persons currently incarcerated at Rikers Island (see, e.g., *Azor-El*, No. 20 Civ. 3650, Dkt. #58 (First Amended Complaint), ¶ 171), and that the pending motion for a preliminary injunction similarly seeks relief on behalf of all persons incarcerated at Rikers Island (see, e.g., *Azor-El*, No. 20 Civ. 3650, Dkt. #65, 67). To the extent Defendants challenge Plaintiffs' standing to seek such relief, they may raise their objections in their opposition to the pending motion for a preliminary injunction and/or through future motion practice.

The Clerk of Court is respectfully directed to docket this Order in case numbers 20-cv-3650, 20-cv-3978, 20-cv-3980, 20-cv-3981, 20-cv-3982, 20-cv-3983, 20-cv-3985, 20-cv-3990. The Clerk of Court is directed to terminate the motions pending at docket number 70 in case number 20-cv-3650; docket number 43 in case number 20-cv-3978; docket number 43 in case number 20-cv-3980; docket number 18 in case number 20-cv-3981; docket number 41 in case number 20-cv-3982; docket number 41 in case number 20-cv-3983; docket number 71 in case number 20-cv-3985; and docket number 41 in case number 20-cv-3990.

Dated: January 29, 2021
New York, New York

SO ORDERED.

A handwritten signature in blue ink, reading "Katherine Polk Failla".

HON. KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE